IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 1677 of 2006(Y)

PETITIONER:

MAITHRI RESIDENTS ASSOCIATION,
THACHODE, PARASSALA P.O,. REPRESENTED BY ITS
PRESIDENT, S.RAJU, RESIDNG AT ATTOORVILAKOM PUTHEN
VEEDU, KARUMANOOR, PARASSALA.

(CAUSE TITLE AMENDED DELETING "AMBEDKAR NAGAR"
AND INSERTING "MAITHRI" AS PER ORDER DATED 25.8.2006
IN I.A.NO.10317 OF 2006)
(PRIOR TO AMENDMENT THE PETITIONER WAS
"AMBEDKAR NAGAR RESIDENTS ASSOCIATION")

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, LOCAL SELF ADMINISTRATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PANCHAYATHS,
THIRUVANANTHAPURAM.

3. THE SECRETARY, PARASSALA GRAMA PANCHAYAT
PARASSALA P.O. THIRUVANANTHAPURAM.

4. S.KUNJU KUNJU, S/O.SUKUMARAN,
THACHODE, KARUMANOOR, PARASSALA P.O.
THIRUVANANTHAPURAM.

5. THE SC/ST WELFARE COMMITTEE OF KERALA,
LEGISLATIVE ASSEMBLY, REPRSENTED BY ITS
SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R1 & R2 BY GOVT.PLEADER SRI.K.J.MOHAMMED ANSAR
R3 BY ADV.SRI.M.SREEKUMAR
R4 BY ADV. SRI.NAGARAJ NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.1677 OF 2006

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DATED THIS THE 1ST MARCH, 2007

J U D G M E N T

The Maithri Residents' Association (formerly Ambedkar Nagar Residents' Association) which claims to be an association of the Thachode Harijan Colony is aggrieved by Ext.P2 order issued by the Director of Panchayats to the Secretary of the Parassala Grama Panchayat directing the Panchayat to reconstruct a compound wall belonging to the 4th respondent, one S.Kunju Kunju and to pay compensation to him for the damages caused on account of the demolition of the compound wall by the Panchayat at the time of development of the Panchayat road by the side of which the compound wall stood. Ext.P2 is in fact issued by the Director of Panchayats on the basis of a Government letter which had been issued by the Government as per the directions issued by the SC/ST Welfare Committee of the Legislative Assembly. The State of Kerala is the 1st respondent; the Director of Panchayats is the 2nd respondent; and the Secretary of the Parassala Grama Panchayat, Sri.S.Kunju Kunju and the SC/ST Welfare Committee of the Legislature are respectively respondents 3 to 5. According to the petitioner, the Maithri Residents' Association has about 114 families as its members and they are the

beneficiaries of the Thachode Harijan Colony road for the past 14 years. The road is included in the Road Register maintained by the 3rd respondent-Panchayat and was developed using SCP Fund provided by the District Collector. The 4th respondent gave a complaint to the 5th respondent-Committee alleging that his compound wall was demolished some time during 1996 at the time of developing the road. The Committee conducted an enquiry and issued certain directions. Ext.P1 is copy of the report of the Committee. The Government after accepting the recommendations in Ext.P1 has issued letter to the 2nd respondent who has now issued Ext.P2 order directing the Secretary of the Panchayat to reconstruct the compound wall of the 4th respondent. The direction, petitioner alleges, is to construct the compound wall upon the retaining wall of the road at the cost of the Panchayat. If the said direction is implemented, the utility of the road will be reduced and vehicles will not be able to ply through the road. At no point of time the beneficiaries of the road who would be affected if Ext.P2 is implemented and who had surrendered their lands free of cost for the development of the road were heard before Ext.P2 order was passed. The petitioner alleges that the Panchayat is now taking hasty steps to reconstruct the compound wall without making any alternate

arrangements as recommended in Ext.P1. If Ext.P2 is implemented, the utility of the road will be reduced and the road will be unfit for motor traffic. Ext.P3 is copy of the detailed representation submitted by the petitioner before the 1st respondent-Government. The Government has not so far taken any decision on Ext.P3. On the above averments, the petitioner prays for the following reliefs:-

> "i) a writ of mandamus or any other appropriate writ, order or direction directing respondents 1 to 3 not to proceed with the construction of the compound wall of the 4th respondent unless an alternative arrangement is made by way of acquisition or any other proceedings so that the utility of the road will not be affected by the said construction;
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> ii) a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Ext.P2 and quash the same."

2. A very detailed counter affidavit has been filed by the 4th respondent raising very serious contentions. The very existence of the writ petitioner as an Association representing the residents of the Thachode Harijan Colony is questioned in the counter affidavit and the

petitioner-Association is described as a bogus association. It is contended that there is no housing colony by name Ambedkar Nagar and that the road in question caters to the Thachode Pattikajathi Colony which has around 25 residents only. Exts.R4(a) to Ext.R4(h) documents have been produced along with this counter affidavit. It is contended that on the basis of the assignment deed executed by the 4th respondent's father in favour of his wife in 1981, the 4th respondent constructed a residential building in the property for his residence; and the adjacent 5 cents also devolved on the 4th respondent's wife and thus the 4th respondent is in absolute possession and residential enjoyment of land having a total extent of 10 cents situated by the side of the road in question. In 1996, the authorities of the Panchayat widened the road by demolishing the compound wall of the 4th respondent's property and thereafter he constructed a new granite basement along the existing southern and eastern boundaries of his property and he was assured by the Panchayat authorities that the proposal to widen the pathway further will be implemented without affecting his property. However, since the 4th respondent had certain apprehensions, O.S.No.949 of 1997 was filed against the 3rd respondent before the Principal Munsiff's Court, Neyyattinkara for an

injunction restraining the defendants therein from trespassing into the 4th respondent's property and from demolishing the granite basement on the southern and eastern sides and for a direction to permit him to construct compound wall above the granite basement. The suit was decreed. Ext.R4(a) is copy of the judgment and Ext.R4(b) is copy of the decree. The Panchayat filed a belated appeal against the above judgment and decree as A.S.No.16 of 2000 before the Neyyattinkara Sub Court. Though there was no stay, the Panchayat did not implement the decree in favour of the 4th respondent. He approached the Ombudsman for Local Self Government Institutions and filed a petition before the 5th respondent also. The 5th respondent passed orders containing directions in favour of the 4th respondent. Thereafter, on the basis of the petition submitted by him before the Government and reports of the Regional Town Planner and the Senior Town Planner and considering the recommendations of the 5th respondent, Government issued an order to the Panchayat and thereafter only the Panchayat adopted Ext.R4(c) resolution deciding to implement the recommendations of the 5th respondent and the directions of the Ombudsman. Further, the Panchayat adopted Ext.R4 (d) resolution by which it was decided to withdraw the appeal which

the Panchayat had filed against Ext.R4(a) judgment. Thereafter, Ext.R4(e) letter was issued to the 4th respondent by the Panchayat requesting him to submit an estimate of the construction and of the damages sustained by him on account of the demolition of the wall. Pursuant to Ext.R4(e), the 4th respondent submitted Ext.R4(f) representation dated 24.12.2005 before the Panchayat. Thereafter, the Panchayat called for tenders for reconstruction of the compound wall. Ext.R4(g) is the tender notification published in Kerala Kaumudi dated 29.12.2005. Anticipating obstructions from others, the Panchayat sought police protection. Ext.R4(h) is copy of the letter issued by the Panchayat to the local Circle Inspector. The counter affidavit submits that if the petitioner-Association is aggrieved by the decision of the Panchayat, they are having statutory alternate remedies and should not have rushed to this Court before availing those remedies. The counter affidavit proceeds to deny the averments and asseverations contained in the Writ Petition, refuting the grounds raised. Subsequently the 4th respondent has produced Ext.R4(i) which is copy of the site plan forwarded by the Assistant Engineer to the Secretary of the Panchayat. This will show that the average width of the road passing by the side of the 4th respondent's

property is 2.8 metres and the maximum width is 3 metres and at no place the width of the said road is less than 2.5 metres. It is accordingly contended that the petitioner's contention that the road will be blocked in the event of construction of the compound wall is untenable. Ext.R4(j) which is a letter issued by the 3rd respondent to the 4th respondent certifying that there is no association by name Ambedkar Residents' Association is also produced. Exts.R4(k) and R4 (l) have also been produced subsequently by the 4th respondent. Ext.R4(k) is a letter issued by the District Registrar (General) to the effect there is no association by name Ambedkar Nagar Residents' Association. Ext.R4(l) is two photographs of the road in question which are relied on to contend that there is sufficient and ample space for vehicular traffic on the road situated by the side of the 4th respondent's property.

3. Reiterating their contentions, the petitioner has filed a reply affidavit producing Exts.P5 and P6. Ext.P5 is copy of the decision of the Panchayat to incorporate the road in question in the Road Register and Ext.P6 is the proceedings of the District Collector, Thiruvananthapuram allotting funds for development of the road. Ext.P7 is copy of the resolution of the Panchayat by which it is decided

to acquire properties from the opposite side of the 4th respondent's property for the widening of the road.

4. Sri.Suman Chakravarthy, Advocate addressed me on behalf of the petitioner and the Government Pleader addressed me on behalf of respondents 1 and 2. It was Sri.Nagaraj Narayanan, Advocate who addressed me on behalf of the 4th respondent, the contesting party and Sri.M.Sreekumar, Advocate on behalf of the Panchayat. The Government Pleader and the learned counsel made submissions on the basis of the pleadings raised by the parties and the materials placed on record.

5. Having considered the rival submissions addressed before me, I do not find any reason for quashing Ext.P2 which is now issued by the Director of Panchayats on the basis of the recommendations of the 5th respondent-Committee and letter from the Government to implement those recommendations. It is also seen that the Ombudsman for Local Self Government Institutions had also issued directions to have the compound wall of the 4th respondent reconstructed on its original position. Ext.R4(a) judgment by which a decree of injunction both prohibitory and mandatory was issued against the Panchayat has attained finality. The Panchayat has to

implement Ext.P2. But, at the same time, it is seen that the Panchayat has adopted Ext.P7 resolution to acquire properties belonging to one Sakunthala for widening the road in question. Ext.P7 will show that the Government is being moved for invocation of the emergency provisions in the Land Acquisition Act. In view of Ext.P7, even as I dispose of the Writ Petition without granting any relief to the petitioner, there will be a direction to the Panchayat to implement Ext.P2 only after a period of four months from today.

The Writ Petition is disposed of as above.

(PIUS C. KURIAKOSE, JUDGE)

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